

## **2007 DRAFTING REQUEST**

### **Assembly Amendment (AA-ASA1-AB207)**

Received: **04/23/2007**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Louis Molepske (608) 267-9649**

By/Representing: **Chris McKinny**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - telco**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Molepske@legis.wisconsin.gov**

Carbon copy (CC:) to:

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#### **Pre Topic:**

No specific pre topic given

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#### **Topic:**

Definition of "gross receipts"

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#### **Instructions:**

See Attached

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#### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1	mkunkel 04/23/2007	kfollett 04/23/2007	jfrantze 04/23/2007	_____	cduerst 04/23/2007	cduerst 04/23/2007	

FE Sent For:

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/?	mkunkel	11/15/07 4/23		J. Sell 4/23			

FE Sent For:

<END>

#### **4. Expand Definition of "Gross Receipts" for Purposes of Calculating Franchise Fee.**

**Concern:** As much as possible, the current franchise fees collected by municipalities should not be reduced so that property taxes will not need to be increased to make up for the short fall in general fund revenue. Thus, these amendments propose to include within the definition of gross receipts, revenue items that are typically included as part of the franchise fee in most municipal franchises.

Currently, many communities receive franchise fees that include advertising commissions as part of the revenue base. Thus, item "h" is intended to maintain the status quo. This language was taken from Michigan's video legislation.

Regarding item "i," a federal appellate court reversed a FCC cable rate order that had concluded "gross revenues" did not include the amount collected for the franchise fee. City of Dallas v. FCC, 118 F.3d 393 (5<sup>th</sup> Cir. 1997). Thus, since 1997, cable operators have had to pay a franchise fee on the revenues collected from subscribers for the franchise fee payment. Without the proposed language, current franchise fees in most communities would be reduced by 0.025%.

Item "j" recognizes that video and cable services will be offered in a bundle with other non-video services (e.g., Internet and telephone) and offered at a package discount. It must be clear that the video service provider cannot allocate the entire amount of the discount to the video service to reduce its obligation to pay the video service provider fee (or franchise fee). The use of GAAP principles does not obviate the need for the proposed provision because GAAP does not dictate how a package discount is to be allocated among the services in the bundle. The language proposed is based on language in the recent agreement between AT&T and Milwaukee.

#### **Recommended amendments:**

>\*Page 2, line 3 of the Assembly Amendment, to Assembly Substitute Amendment (LRBs0061/1), to 2007 Assembly Bill 207: after that line insert:

h. Any advertising commissions paid to an affiliated third party for video service advertising.

i. Any video service provider fee imposed on the provider that is passed on to subscribers.

j. Revenue attributable, on a pro-rata and non-weighted basis, to video service when sold as part of a package or bundle, or functionally integrated, with services other than video service.

>At page 5, lines 11 to 12, delete ", and includes any compensation required under s. 66.0425".



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRBa0390/1-  
MDK:...

gf

today  
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0-NOTE

ASSEMBLY AMENDMENT ,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2007 ASSEMBLY BILL 207

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 5, line 11: delete lines 11 and 12 and substitute:

3 "(i) "Franchise fee" has the meaning given in 47 USC 542 (g).".

4 2. Page 5, line 13: delete lines 13 to 15 and substitute:

5 "(j) 1. "Gross receipts" means all revenues from a video service provider's  
6 provision of video service in a municipality, including all of the following:".

7 3. Page 5, line 24: before that line insert:

8 "h. <sup>m</sup> Any advertising commissions paid to an affiliate of the video service  
9 provider for advertising over the video service network of the video service provider.

10 i. <sup>m</sup> Video service provider fees that are passed on to subscribers.

- ① j. Revenues attributable, on a pro rata and nonweighted basis, to video service  
2 that is sold as part of a package or bundle, or that is functionally integrated, with  
3 services other than video service.”.

4 4. Page 6, line 11: delete “video service provider fees and”.

change  
component  
5 5. Page 6, line 12: <sup>after "159"</sup> before the period insert “and excluding video service  
6 provider fees”.

7 (END)

D-Note

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa0390/1dn

MDK: *kgf*

*Date*

Rep. Molepske:

This amendment corresponds to item 4 in the WAPC document (i.e., expansion of definition of "gross receipts"). Please note the following:

1. I had to change the introductory text in proposed s. 66.0420 (2) (j) 1. because some of the items that you want to add to "gross receipts" are not received by a video service provider or from subscribers.
2. The WAPC document refers to "video service advertising," but I assume that it should have referred to advertising over the video service network of a video service provider, and I changed the language accordingly. If you need to make changes to what I did, please let me know.
3. The language regarding revenues attributable to video service sold as part of a package or bundle should probably be clarified. I'm not sure whether the "pro rata and nonweighted" language achieves what it is intended to achieve.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa0390/1dn  
MDK:kjf:jf

April 23, 2007

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